

Office of the Secretary, Education

§ 85.450

§ 85.425 When do I check to see if a person is excluded or disqualified?

As an agency official, you must check to see if a person is excluded or disqualified before you—

- (a) Enter into a primary tier covered transaction;
- (b) Approve a principal in a primary tier covered transaction;
- (c) Approve a lower tier participant if agency approval of the lower tier participant is required; or
- (d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.430 How do I check to see if a person is excluded or disqualified?

You check to see if a person is excluded or disqualified in two ways:

- (a) You as an agency official must check the *EPLS* when you take any action listed in § 85.425.
- (b) You must review information that a participant gives you, as required by § 85.335, about its status or the status of the principals of a transaction.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.435 What must I require of a primary tier participant?

You as an agency official must require each participant in a primary tier covered transaction to—

- (a) Comply with subpart C of this part as a condition of participation in the transaction; and
- (b) Communicate the requirement to comply with Subpart C of this part to persons at the next lower tier with whom the primary tier participant enters into covered transactions.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.440 What method do I use to communicate those requirements to participants?

- (a) To communicate those requirements, you must include a term or con-

dition in the transaction requiring each participant's compliance with subpart C of this part and requiring the participant to include a similar term or condition in lower-tier covered transactions.

- (b) The failure of a participant to include a requirement to comply with Subpart C of this part in the agreement with a lower tier participant does not affect the lower tier participant's responsibilities under this part.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455 of Pub. L. 103-355, 108 Stat. 3243 at 3327.

[68 FR 66612, Nov. 26, 2003]

§ 85.445 What action may I take if a primary tier participant knowingly does business with an excluded or disqualified person?

If a participant knowingly does business with an excluded or disqualified person, you as an agency official may refer the matter for suspension and debarment consideration. You may also disallow costs, annul or terminate the transaction, issue a stop work order, or take any other appropriate remedy.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.

§ 85.450 What action may I take if a primary tier participant fails to disclose the information required under § 85.335?

If you as an agency official determine that a participant failed to disclose information, as required by § 85.335, at the time it entered into a covered transaction with you, you may—

- (a) Terminate the transaction for material failure to comply with the terms and conditions of the transaction; or
- (b) Pursue any other available remedies, including suspension and debarment.

Authority: E.O. 12549 (3 CFR, 1986 Comp., p. 189); E.O. 12689 (3 CFR, 1989 Comp., p. 235); 20 U.S.C. 1082, 1094, 1221e-3 and 3474; and Sec. 2455, Pub. L. 103-355, 108 Stat. 3243 at 3327.